UNITED NATIONS

E

Economic and Social Council

Distr.
GENERAL

E/CN.4/Sub.2/1994/SR.2
4 August 1994

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

Forty-sixth session

SUMMARY RECORD OF THE 2nd MEETING

Held at the Palais des Nations, Geneva,
on Monday, 1 August 1994, at 4.30 p.m.

Chairman: Mrs. ATTAH

CONTENTS

Election of Officers (continued)

Review of the work of the Sub-Commission

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Sub-Commission at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.94-13363 (E)

The meeting was called to order at 4.40 p.m.

ELECTION OF OFFICERS (agenda item 1) (continued)

1. Mr. BENGOA was elected Vice-Chairman by acclamation.

REVIEW OF THE WORK OF THE SUB-COMMISSION (agenda item 3)

2. The CHAIRMAN invited suggestions regarding possible improvements in the methods of work of the Sub-Commission, with particular reference to the Guidelines adopted by the Sub-Commission at its forty-fourth session.

3. Ms. PALLEY said she was concerned at the inability of the Sub-Commission to engage in intensive expert dialogue outside the various working groups, due largely to the severe time constraints resulting from an overloaded agenda. It was out of the question to drop particular subsidiary items from the agenda to relieve the pressure, as had been suggested in some quarters, but financial and political considerations precluded making more time available for the Sub-Commission's work.

4. The only way forward, therefore, appeared to be to be rationing the time devoted to each particular subject. One possible approach was to establish strict priorities, but that might be difficult in view of the subjective priorities of individual members and might still leave too little time for adequate discussion.

5. The criticism of the Sub-Commission's work expressed by the Commission on Human Rights at its most recent session had tended to be very ill-founded. For example, the Commission had said that the Sub-Commission was neglecting its mandate by paying too little attention to minorities, although discussion of that issue at the Sub-Commission's previous session had had to be postponed until the very last moment solely because of the delay in completing a very weighty and detailed report on the subject, with the result that there had been insufficient time for an adequate discussion.

6. The Sub-Commission had also been criticized for not reviewing developments properly, for not examining implementation procedures, for being careless in the pursuit of its work, and for not performing its deliberative task. It had been severely criticized by one delegation on the grounds that too many of its members lacked human rights expertise, were not truly independent of their Governments, did not work in a spirit of collegiality, and lacked visible commitment to the protection of human rights.

7. While it was unfortunate that the Sub-Commission and its members should be subjected to such ill-informed criticism, it was clear that a failure on the Sub-Commission's part to rationalize its working procedures would inevitably expose it to more attacks of that kind. In particular, the Sub-Commission should focus more on themes than on country situations, although discussion of the latter would still be necessary under items 6 and 9 of its agenda. Moreover, although country situations could be legitimately used to illustrate particular themes, a theme should not be used as a pretext for concentrating on the situation in a particular country.

8. The time devoted by the Sub-Commission to agenda item 6 should be reduced, and consideration might be given to the possibility of merging agenda items 5 and 6. Although that might not be easy to do given the need to pay particular attention to the issue of discrimination, the current situation entailed undesirable duplication.

9. The Guidelines adopted by the Sub-Commission were not inflexible rules and did not appear to preclude stricter limits on the time devoted to individual agenda items. Such time-limits might well encourage groups of non-governmental organizations to make joint statements, thus materially reducing the duplication which wasted so much of the Sub-Commission's time and also enhancing the authority and effectiveness of the statements in question. In addition, any written summaries of NGO statements should be kept short so that everyone would have time to read them.

10. All in all, she thought that a degree of self-regulation by the NGOs themselves would be the most effective means of achieving such improvements. The NGOs might, for instance, establish a bureau which would decide to allow, say, five major speeches by groups of 10 NGOs - with a strict time-limit of 16 minutes to each speech - and another 5 speeches by each of 5 NGOs. The Chairman would then have the discretionary power to allow a limited number of other NGOs to speak at the end of the discussion.

11. Much time had also been wasted by meetings starting late, and that could be avoided by beginning promptly at the scheduled time, provided that a quorum was present.

12. With regard to resolutions, she endorsed the idea, put forward by Ms. Ksentini at a previous session, that the Sub-Commission should have a drafting subcommittee, including a member of the Secretariat, to improve the quality of its draft resolutions and reduce the time spent on purely editorial matters.

13. There appeared to be a serious gap in the procedures available to the Sub-Commission in that, despite its agenda items 6 and 9, there was no specific procedure for reacting to isolated but grave human rights violations. At the previous session, Mr. Alfonso Martinez had devised a novel procedure for some cases in the United States. There was a serious need for a generally applicable procedure of that kind by which the Sub-Commission could act in particular cases of, for example, individuals facing the death penalty, by having its Chairman inform the Government in question of its concern.

14. Lastly, the fact that the list of reports and studies under preparation, included in the report on the Sub-Commission's forty-fifth session (E/CN.4/Sub.2/1993/45, Annex V,B), comprised more "studies" than were permitted by the Sub-Commission's own Guidelines had served as a pretext for certain States to use a procedural argument and send back all the 19 documents listed for review, thus blocking studies unfavourable to them. More attention would have to be paid to strictly defining a study so as to prevent such abuses in the future.

15. Mr. JOINET said that, as chairman of the inter-sessional working group responsible for the elaboration of proposals for rationalizing the work and

agenda of the Sub-Commission, he wished to recall the action already taken on the subject. The Sub-Commission had adopted a number of decisions on its methods of work, as reflected in its resolution 1992/8, not all of which had been put into practice. If that resolution had been fully implemented, most of Ms. Palley's points would have been covered. For example, she had stated that the Sub-Commission should begin its meetings on time; in fact, Guideline No. 13 stated that meetings should begin at the scheduled time, even if there was no quorum, unless a member objected. Guideline No. 15 stated that the speaking time allowed to experts was 20 minutes per item, in one or more statements.

16. Much work had been done on the reform of the agenda. However, choice had had to be made between the existing improved agenda and a radically different five-item alternative. In the face of such a choice, the working group had ultimately decided to postpone any decision.

17. The working group had also been asked to improve coordination which, he thought, was the area in which most progress had been made since the World Conference on Human Rights. Agreement was progressively being reached between the Chairmen of the Sub-Commission and the Commission, and all the special rapporteurs had attended a coordination meeting which had produced a report that should be distributed during the Sub-Commission's current session. The working group had been congratulated by the Commission.

18. At its forty-fifth session, the Sub-Commission had adopted resolution 1993/4 whereby it decided to convene a sessional working group - during its current session - to consider the methods to be used and the procedures to be followed under item 6 of its agenda, particularly with regard to follow-up. That working group would be meeting without any decision having been taken as to how it should operate. Consequently, there was an urgent need for that point to be dealt with by the Sub-Commission as soon as possible.

19. It was true that, in the past, the Commission had severely criticized the Sub-Commission. In recent years, however, such criticism had decreased in intensity and the volume of congratulations had increased.

20. With regard to the question of minorities, it should not be forgotten that the Sub-Commission had decided to devote more time to the topic but that the extra time had not been fully used owing to a lack of speakers. The problem was to find a way of approaching the matter in a constructive rather than a purely descriptive manner.

21. He disagreed with Ms. Palley concerning the lack of "intensive expert dialogue". In any case, a return to academic debating was not desirable. It had been stated that, prior to 1978, the Sub-Commission had been a real body of experts producing high-quality studies without any politicizing in terms of particular countries. High-quality academic debates and the production of valuable reports were all very well, but the facts of the situation had changed. In that respect, the NGOs were playing a vital role.

22. Representing as they did the interests of peoples or categories of people subjected to persecution, their role was not limited to providing information

to experts. For example, if the Sub-Commission adopted a resolution on the situation in a given country, the victims then used it in support of their struggle. Consequently, any attempt to reduce the role played by the NGOs should be viewed with caution. Moreover, Governments needed to be reminded that they should not criticize one another at meetings of the Sub-Commission.

23. The Sub-Commission's confidential procedure was about to be reformed. In that connection, it should be borne in mind that it was a confidential procedure only with respect to particular situations. The debate on its reform need not itself be confidential: the principle of confidentiality applied to the consideration of complaints against States and not to the mechanism used for the purpose.

24. The possibility of adopting a position on a particular case of human rights violation was not a procedural problem, since the Sub-Commission already had many precedents in that regard. Any difficulties involved were political. For the Sub-Commission to act, all that was needed was adequate support from its members.

25. Ms. WARZAZI said that it was not appropriate that experts should have restrictions placed on their speaking time, since that would prevent them from doing their work properly. While the Sub-Commission had adopted its Guidelines, they did not have absolute force and could be amended.

26. It was very important that the Sub-Commission should organize its work in such a way that Friday afternoons were kept free. If meetings began on time and afternoon meetings continued until 6.45 p.m., Friday afternoons could be reserved for members to study their documents, NGOs to organize and working groups to meet.

27. If the Sub-Commission's experts did not reorganize their work, it could hardly be expected that the 80 or so NGOs would do so. The latter, however, should certainly get together to discuss how their contributions could be rationalized by topic, arranging for some 10 of them to speak on each. The order of speakers should be rearranged so that the representatives of the NGOs would speak first, then the representatives of governments making statements equivalent to the right of reply and, lastly, the experts would express their views and comment on what they had heard. Repetition and overlapping with the work of the Commission must both be avoided.

28. Mrs. FORERO UCROS said she agreed that, given the inadequate time available, NGOs should be requested to rationalize their work, to exercise self-control and to avoid duplication. However, no distinction should be made between large and small NGOs, since they were all important in their own fields.

29. Mr. UL-HAKIM, having urged the Sub-Commission to pay more attention to the protection of minorities as an essential part of its original mandate, said that, although the agenda was fixed, that did not mean that it could not be changed. NGOs played a vital part in the Sub-Commission's proceedings by supplying new material on which it could base its decisions. It was very important to save time and, in that respect, punctuality was essential.

30. The Working Group on Contemporary Forms of Slavery had done some splendid work. Its reports and recommendations had been transmitted to his own and some neighbouring countries with excellent results, especially with regard to organ transplantation and child prostitution.

31. The Sub-Commission should discuss the situation in Rwanda on the following day and adopt a resolution concerning it. France had been the first country to help but it was currently withdrawing, while the United States of America was moving in. The Sub-Commission might, perhaps, suggest that the two countries should come to an arrangement, along with others, to carry out the humanitarian work. Without coordination, gunmen would sooner or later be found in Tanzania looting the humanitarian supplies.

32. Mr. CHERNICHENKO said he agreed with both Ms. Palley and Ms. Warzazi. He recalled the practice that the Sub-Commission had followed at its previous session when it had requested the representatives of NGOs to make statements on issues relating to violations of human rights under item 6 only and the fact that, when such representatives had begun to talk of violations under other agenda items, they had been stopped. The Sub-Commission should continue to insist on that minimum rule, which would enable its members to form expert opinions for their reports; that, after all, was the basic purpose of the Sub-Commission's work.

33. He requested that, if possible, item 4 should be discussed together with item 20. The Commission for Human Rights had adopted a decision not to appoint special rapporteurs in connection with three studies that were to have been prepared by Ms. Palley, Ms. Chavez and himself. The Commission had adopted a general - and very ambiguous - decision covering all three cases, which seemed to be designed to brush those studies aside. A procedural situation had thus arisen which required that the Sub-Commission refer to those three studies jointly and the best way to do so would seem to be within the context of item 4. He had already started work on his own study which concerned the issue of the recognition of gross and large-scale violations of human rights perpetrated on the orders of governments or sanctioned by them as an international crime; the issue was of great interest and importance. He was sure that Ms. Palley and Ms. Chavez could say the same of their own studies. The Sub-Commission, having discussed the basic procedural problem, might, at the end of its session, take a general, preferably favourable, decision regarding special rapporteurs for all three studies. It was for that reason that he believed that item 20, which related specifically to Ms. Palley's study should be considered with item 4. Ms. Chavez's study could also be discussed under item 4.

34. Mr. JOINET supported Mr. Chernichenko. It would certainly be desirable to give the floor to the experts and allow them some flexibility at the end of the discussion. Generally speaking, NGOs were in effect the prosecutors; governments could then reply and the members of the Sub-Commission would subsequently come in as experts to assess the issues, having heard both sides.

35. He had himself presided over four consultative meetings with NGOs which had been asked for their proposals concerning the reform of the Sub-Commission's agenda. The relevant document had structured the agenda around five general items which would enable the Sub-Commission to save a

great deal of discussion time. Instead of speaking on five separate items, members would speak once only. He suggested that the document in question should be distributed to the members.

36. As a general principle, overlapping with the Commission on Human Rights should be avoided but, when there was such an overlap, the Sub-Commission could not accept the proposition that, because the Commission had adopted a resolution, the Sub-Commission was not allowed to touch the issue in question. Such an attitude would have precluded the Sub-Commission from considering topics such as apartheid and the occupied Arab territories. There must be flexibility. Resolutions adopted on the same subject by the two bodies were not necessarily the same, because the terms of reference of the two bodies were not the same and their approach to issues was different. The Sub-Commission's resolutions were sometimes more stringent and had been an inspiration to the Commission, which had frequently adopted resolutions proposed by the Sub-Commission.

37. If the Sub-Commission should decide that it would be desirable to reserve half a day per week for reflection, he would prefer the day to be Wednesday rather than Friday.

38. Ms. DAES said, with regard to the organization of the work of the session, that the Sub-Commission had a great deal of work to do on agenda item 15 which comprised six sub-items, including the issue of the United Nations draft declaration on indigenous peoples. She hoped, therefore, that sufficient time would be allocated to the item and that it would be considered as soon as possible since there were representatives of many indigenous peoples, particularly from Latin America, in Geneva who would like to participate in the discussion. For obvious financial reasons, many of those representatives could not prolong their stay in Geneva until the end of August.

39. The CHAIRMAN said that everything possible would be done to meet the requests made by Ms. Daes, provided that the relevant reports were ready.

40. Mr. ALFONSO MARTINEZ said that, two years previously, the Sub-Commission had received a specific proposal from a large number of NGOs on ways of improving its methods of work. That proposal should be borne in mind in connection with the rationalization of the agenda. The views expressed by Ms. Warzazi on the order in which speakers should be heard were based on practical experience. The proliferation of issues under agenda item 4 was tantamount to an expansion of the Sub-Commission's agenda. He looked forward to hearing the concrete proposals that were to be submitted by the officers, particularly their suggestions concerning the various working groups to be set up during the session.

41. Mr. BOSSUYT said he supported the last point made by Mr. Alfonso Martinez.

42. Mrs. GWANMESIA said that items 7 and 19 were really parts of a single item. Relevant issues other than those specifically mentioned in those items might crop up and could be fitted in.

43. She would have preferred the title of item 10 to read "Administration of justice and human rights". The reference to detainees was restrictive. Sub-item (d) of that item might, perhaps, be merged with item 11, the title of which would then read: "The right to a fair trial and the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers".

44. The CHAIRMAN said that the titles of agenda items could not be changed but the working group on the Sub-Commission's methods of work would take into account all the suggestions that had been made. The question of Rwanda would be discussed at the next meeting of the Sub-Commission under agenda item 6.

45. She asked the members to consult among themselves regarding membership of the working groups on methods of work, detention and compensation.

46. Mr. CISSE, Secretary of the Sub-Commission, replying to a question from the CHAIRMAN, said that, with a few exceptions, the documentation for the Sub-Commission's forty-sixth session was in order.

47. Mr. CHERNICHENKO asked, with reference to agenda item 19, what the current position was regarding the draft declaration on the right of everyone to leave any country, including his own.

48. Mr. HATANO said that, before seeking nominations from the five regional groups, the Sub-Commission should decide whether it considered that a working group on compensation was needed.

The meeting rose at 6.05 p.m.